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OFFICE OF PETITIONS

In re Application of	:
Stephen C. Bytnar	:
Application No. 10/643,960	: DECISION GRANTING PETITION
Filed: August 20, 2003	: UNDER 37 CFR 1.181
Attorney Docket No. 1533.6310004	:

This is a decision on the petition under 37 CFR 1.137(b), filed December 29, 2005, which, for the reasons stated below, is being treated as a petition requesting withdrawal of the holding of abandonment pursuant to the provisions of 37 CFR 1.181.

The petition is GRANTED.

The Notice of Abandonment mailed on December 15, 2005 stated that this application is abandoned for failure to timely file a reply to the Office action of November 29, 2004 and that the reply received on October 21, 2005 did not constitute a proper or bona fide attempt at a proper reply to the non-final rejection.

A review of the file record discloses that a non-final Office action was mailed on November 30, 2004, which set a three month shortened statutory period for reply. A timely reply, along with a three month extension of time fee, was received on May 27, 2005. However, in a Notice of Non-Compliant Amendment mailed July 28, 2005, a one month extendable time period was set within which to comply with the provisions of 37 CFR 1.121. A response thereto was timely received on August 22, 2005. This amendment was likewise found to be non-compliant in a Notice mailed on October 21, 2005 which again set a one month extendable time period within which to comply with the provisions of 37 CFR 1.121. A reply thereto was received on December 29, 2005, along with the filing of the instant petition to revive.


As the extendable period set in both the July 28, 2005 Notice and the October 21, 2005 Notice had not yet expired at the time of mailing of the Notice of Abandonment, the Notice of Abandonment was prematurely mailed. Further, as extensions of time were still available for reply to the October 21, 2005 Notice, a two

month extension of time fee of \$450 for the reply filed on December 29, 2005 will be taken from the \$1,500 petition to revive fee submitted, and the excess fee of \$1,050 will be refunded to petitioner's deposit account. However, if the examiner determines that the reply filed on December 29, 2005 is still non-responsive to the October 21, 2005 Notice of Non-Compliant Amendment, this case could be found to be abandoned and then a petition to revive would be appropriate.

In view of the above, the Notice of Abandonment mailed on December 15, 2005 is vacated and the holding of abandonment is hereby withdrawn.

Inquiries concerning this decision may be directed to the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 1755 for appropriate action in the normal course of business on the reply received December 29, 2005.

  
Frances Hicks  
Petitions Examiner  
Office of Petitions